

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF
HOMELAND SECURITY,
Office of the General Counsel
245 Murray Lane SW
Mailstop: 0485
Washington, DC 20528,

U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,
500 12th Street SW
Washington, DC 20536,

and

U.S. CUSTOMS
AND BORDER PROTECTION,
1300 Pennsylvania Avenue NW
Washington, DC 20229

Defendants.

Case No. _____

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Homeland Security and its related component agencies, the U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

4. Because Defendants have failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i), and is now entitled to judicial action enjoining the agencies from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of such information, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Homeland Security (“DHS”) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The DHS Privacy Office (“DHSHQ”) coordinates FOIA requests for several DHS components, including the DHS Office

for Civil Rights and Civil Liberties (“CRCL”). DHS has possession, custody, and control of the records that American Oversight seeks.

7. Defendants U.S. Immigration and Customs Enforcement (“ICE”) and U.S. Customs and Border Protection (“CBP”) are components of DHS headquartered in Washington, DC, and agencies of the federal government within the meaning of 5 U.S.C. § 552(f)(1). ICE and CBP have possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

8. On February 8, 2019, American Oversight submitted four FOIA requests to DHS, ICE, and CBP seeking documents relating to individuals who died during or following their detention by ICE or CBP. American Oversight limited its requests to documents post-dating January 1, 2018 for certain requests, and March 1, 2018 for remaining requests in order to reduce the volume of responsive records.

CRCL Complaints FOIA

9. On February 8, 2019, American Oversight submitted a FOIA request to DHS with internal tracking number DHS-19-0192, seeking the following records:

1. All complaints received by [CRCL] since January 1, 2018, alleging any misconduct or violation of rights related to any of the following:
 - a) Conditions, actions, or failures to take action that are alleged to have contributed to the death of any person held in the custody of CBP or ICE, or conditions, actions or failures to take action of CBP or ICE that are alleged to have contributed to the death of any person after their release from CBP or ICE custody;
 - b) Lack of adequate mental health care provision for any person held in the custody of CBP or ICE (including, but not limited to, complaints related to the failure to provide medications);
 - c) Lack of adequate health care provision for any pregnant person held in the custody of CBP or ICE (including, but not limited to, complaints related to miscarriage and failure to provide required medications);
 - d) Lack of adequate health care provision for any infant or child held in the custody of CBP or ICE; or

- e) Dangerous conditions experienced by any pregnant person held in the custody of CBP or ICE (including, but not limited to, complaints regarding the inadequate provision of food, beds, or appropriate heat (for example, extreme cold experienced in “hieleras” used by CBP)).
2. Records sufficient to show the number of complaints received by CRCL since January 1, 2018, regarding the issues specified in item 1. To the extent CRCL maintains database records that can be readily exported as or otherwise produced in the form of spreadsheets or lists of such complaints, American Oversight requests those records.

American Oversight understands that privacy interests may be implicated by some of the records responsive to this request, but American Oversight believes much of the requested information should nonetheless be disclosed. First, the requested information would be of significant public benefit in exposing matters of great public importance, and this public benefit must be weighed against the privacy interests of individuals’ information in these records. Second, CRCL must produce reasonably-segregable non-exempt material from any exempt material. The redaction of potentially exempt, personally identifiable information from the requested complaints may be appropriate, but withholding the records in service of privacy interests would be an unreasonable failure to segregate non-exempt material.

10. On February 11, 2019, DHS acknowledged receipt of the CRCL Complaints FOIA, conditionally granted American Oversight’s request for a fee waiver, and assigned the FOIA request reference number 2019-HQFO-00407.

11. American Oversight has not received any further communication from DHS regarding the CRCL Complaints FOIA.

ICE Reports FOIA

12. On February 8, 2019, American Oversight submitted a FOIA request to ICE with internal tracking number DHS-ICE-19-0196, seeking the following records:

1. A copy of ICE’s initial report on the May 2018 death of ICE detainee Roxana Hernandez (also listed in DHS records as Jeffry Hernandez), which ICE was required to publish by June 24, 2018.
2. A copy of ICE’s final report on the May 2018 death of ICE detainee Roxana Hernandez (also listed in DHS records as Jeffry Hernandez), which ICE was required to publish by July 24, 2018.

3. A copy of ICE's initial report on the November 2018 death of ICE detainee Mergensana Amar.
4. A copy of ICE's final report on the November 2018 death of ICE detainee Mergensana Amar.

Please provide all responsive records from March 1, 2018, through the date of the search.

13. On March 6, 2019, ICE acknowledged receipt of the ICE Reports FOIA and assigned it reference number 2019-ICFO-29821.

14. American Oversight has not received any further communication from ICE regarding the ICE Reports FOIA.

ICE Records FOIA

15. On February 8, 2019, American Oversight submitted a FOIA request to ICE with internal tracking number DHS-ICE-19-0197, seeking the following records:

1. All records related to ICE's detention of Roxana Hernandez (also listed in DHS records as Jeffry Hernandez) who died in May 2018 following her detention at the ICE detention facility in Cibola County, New Mexico. Responsive records include, but are not limited to, records related to the care, treatment, discipline, and abuse of Ms. Hernandez, as well as reports or reviews of Ms. Hernandez's death.
2. The records containing the factual information relied upon for ICE's public statements regarding Ms. Hernandez's death and detention are also responsive.
3. All records related to ICE's detention of Mergensana Amar who died in November 2018 following his detention at the Northwest Detention Center in Washington State. Responsive records include, but are not limited to, records related to the care, treatment, discipline, forced-feeding, and involuntary hydration of Mr. Amar, as well as reports or reviews of Mr. Amar's death.
4. The records containing the factual information relied upon for ICE's public statements regarding Mr. Amar's death and detention are also responsive.

Please provide all responsive records from March 1, 2018, through the date of the search.

16. American Oversight has not received any further communication from ICE regarding the ICE Records FOIA. ICE has not assigned a reference number to the FOIA request.

CBP Records FOIA

17. On February 8, 2019, American Oversight submitted a FOIA request to CBP with the internal tracking number DHS-CBP-19-0198, seeking the following records:

1. All records related to CBP's detention of Jakelin Caal Maquin, who died in December 2018 following her detention by CBP in New Mexico. Responsive records include, but are not limited to, records related to her care and treatment, as well as reports or reviews of her death.

The records that formed the factual basis for CBP's statements to media outlets regarding Jakelin Caal Maquin's death are responsive to this request.

2. All records related to CBP's detention of Felipe Alonzo Gomez, who died in December 2018 following his detention by CBP in New Mexico. Responsive records include, but are not limited to, records related to his care and treatment, as well as reports or reviews of his death.

The records that formed the factual basis for CBP's statements to media outlets regarding Felipe Alonzo Gomez's death are responsive to this request.

3. All records related to CBP's 2018 detention of Roxana Hernandez (also listed in DHS records as Jeffry Hernandez), who died following her transfer to ICE custody and her detention at the ICE detention facility in Cibola County, New Mexico. Responsive records include, but are not limited to, records related to the care, treatment, discipline, and abuse of Ms. Hernandez, as well as reports or reviews of Ms. Hernandez's death.

Please provide all responsive records from March 1, 2018, through the date of the search.

18. On March 11, 2019, CBP acknowledged receipt of the CBP Records FOIA, granted American Oversight's request for a fee waiver, and assigned the FOIA request reference number CBP-2019-027899.

19. On May 15, 2019, CBP changed the reference number for the FOIA request to CBP-IA-2019-027899.

20. American Oversight has not received any further communication from CBP regarding the CBP Records FOIA.

Exhaustion of Administrative Remedies

21. As of the date of this Complaint, Defendants have failed to (a) notify American Oversight of a final determination regarding American Oversight's FOIA requests, including the scope of responsive records Defendants intend to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

22. Through Defendants' failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

23. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

24. American Oversight properly requested records within the possession, custody, and control of Defendants.

25. Defendants are agencies subject to FOIA, and they must therefore make reasonable efforts to search for requested records.

26. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

27. Defendants' failure to conduct an adequate search for responsive records violates FOIA and applicable regulations.

28. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

29. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

30. American Oversight properly requested records within the possession, custody, and control of Defendants.

31. Defendants are agencies subject to FOIA, and they must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

32. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

33. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

34. Defendants' failure to provide all non-exempt responsive records violates FOIA and applicable regulations.

35. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: June 21, 2019

Respectfully submitted,

/s/ Erica C. Lai

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